

LEASE

THIS LEASE is made this ____ day of _____, 2002 by and between the City of Alexandria, Virginia and the Virginia Counties of Fairfax, Fauquier, Loudoun and Prince William (the "Localities"), as the Lessors, and Birmingham Green Adult Care Residence, as the Lessee.

WITNESSETH:

WHEREAS, Lessee is a Virginia nonstock corporation that was formed for charitable, scientific and educational purposes including the establishment, maintenance and operation of long-term care programs which are primarily for the benefit and welfare of low-income persons; and

WHEREAS, Lessee is the ~~owner and~~ operator of an Adult Care Residence (ACR), an assisted living facility located on land owned by Lessors that provides housing for low-income persons; and

WHEREAS, Lessee has determined that the ACR needs to be replaced; and

WHEREAS, Lessee intends to apply for funding from the U.S. Department of Housing and Urban Development (HUD) under HUD's Section 202 program to provide the capital for replacing the ACR by building two new 'supportive housing for the elderly' projects; and

WHEREAS, the Localities own, as tenants in common, 54 acres of land (the "Land") located in Prince William County, Virginia as evidenced by the Deeds recorded in the land records of Prince William County in Deed book 1119, at pages 601, 610 and 617; and

WHEREAS, 42 acres of the Land are undeveloped; and

WHEREAS, the Localities are authorized, in accordance with Section 15.2-1800B of the Code of Virginia, to lease the Land for ~~any~~ public use; and

WHEREAS, the Localities have each held a public hearing and determined that leasing part of the Land for the purpose of Lessee's construction, furnishment, equipment, operation and maintenance of two new 'supportive housing for the elderly' projects on the Land constitutes a public use; and

WHEREAS, Lessee desires to lease from Lessors a sufficient amount of the undeveloped portion of the Land for the purpose of building, furnishing, equipping, operating and maintaining two new 'supportive housing for the elderly' projects, and Lessors desire to lease such land to Lessee.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Rules of Interpretation. For the purposes of this Lease, except as otherwise expressly provided or unless the context otherwise requires:

- (a) "This Lease" means this agreement as originally executed and as it may from time to time be supplemented or amended.
- (b) All references in this Lease to designated "Sections" and other subdivisions are to the designated Sections and other subdivisions of this Lease. The words "herein," "hereof," "hereunder" and "herewith" and any other words of similar import refer to this Lease as a whole and not to any particular Section or other subdivision.
- (c) The singular shall include the plural and vice versa.
- (d) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.
- (e) The headings used in this Lease are for convenience of reference only and shall not define or limit the provisions hereof.

SECTION 2. Premises. Lessors lease to Lessee and Lessee leases from Lessors that portion of the Land which is more particularly described as Parcel C on Exhibit A (the "Site"), together with and subject to all rights of ingress and egress over and across the Land that are a matter of record. Exhibit A is attached hereto and is expressly incorporated and made a part of this Lease.

SECTION 3. Terms. The term of this Lease shall be for a period of eighty ~~fifty-five~~ years beginning on _____, 2002 and ending on _____, ~~2057~~ 2082. If necessary to meet HUD requirements, the term of this Lease shall be extended to the extent necessary to comply with any such requirements. If Lessors, upon the expiration of this Lease, decide to continue leasing the Site, together with any improvements, Lessee shall have the right of first refusal for any new lease. This right of first refusal shall entitle Lessee the absolute right to enter into a new lease with Lessors if Lessee is willing to match the terms of a new lease as agreed to by any other prospective lessee.

SECTION 4. Rent. Lessee shall pay annually rent in the amount of one dollar (\$1.00), payable on or before the first day of each lease year.

SECTION 5. Construction of Projects.

- (a) Lessee shall be entitled to build two new 'supportive housing for the elderly' projects in two phases. Phase I shall consist of between 60 and 80 units, or a lesser number consistent with the amount of funding approved by HUD, and construction shall begin within a reasonable time after HUD has approved Lessee's application for funding under HUD's Section 202 program. Phase II shall be between 40 and 60 units, or a lesser number consistent with the amount of funding approved by HUD, and construction shall also begin within

a reasonable time after HUD has approved Lessee's second application for Section 202 funding.

- (b) Lessee shall file an application for the funding of Phase I in 2002 and an application for Phase II funding at the next opportunity after Lessee's Phase I funding application has been approved.
- (c) Lessors shall cooperate in obtaining all necessary approvals for the construction of each supportive housing for the elderly project, including any zoning, subdivision or other land use action with respect to the Site that may be required to enable the construction of either or both projects to take place.

SECTION 6. Payment of Amounts Imposed Against Property. During the terms of this Lease, the Lessee shall pay directly, or otherwise reimburse Lessors, as appropriate, all existing and future taxes, fees, assessments, duties, impositions, and burdens of any nature whatsoever charged or imposed upon the Site, or any improvements thereon and shall, upon request, promptly deliver to the Lessors proper and sufficient receipts and other evidence of the payment and discharge of the same.

SECTION 7. Covenants of Lessee.

- (a) ~~To the extent permitted by HUD, a priority will be given. Each of the Localities will be given a priority, for up to twenty percent of the total number of supportive housing units in the projects,~~ in selecting persons for admission to the projects, to residents of the Localities.
- (b) Lessee will not make any capital improvements to the 'supportive housing for the elderly' projects which would expose Lessors to liability unless those improvements are made under terms and conditions approved by Lessors in advance. However, Lessee shall have the full right and authority, consistent with its operation of the supportive housing projects to maintain the Site in good condition, and Lessee affirmatively covenants to do so. This authority shall include the right, without Lessors' prior approval, to make repairs and reasonable enhancements to the buildings and operating systems, at Lessee's sole cost and expense.
- (c) Lessee will maintain at all times insurance on the Site, and any improvements thereon, in accordance with Section 13 hereof, and will name Lessors as an additional insured under all such insurance policies, subject to a non-contribution clause.
- (d) Lessee shall permit Lessors or their agent, at all reasonable times, to enter the Site to inspect the condition thereof.

- (e) Lessee will not, without the express written consent of Lessors, create nor attempt to create any lien or in any way encumber the Site, or its leasehold interest created hereby, except as permitted herein.
- (f) Lessee covenants that the Site shall be used by Lessee exclusively for the purpose of ~~owning~~, operating and maintaining the 'supportive housing for the elderly' projects constructed thereon. Such use shall conform with applicable local ordinances and State and Federal laws and regulations. No other use of the Site shall be allowed unless prior written consent is obtained from the Lessors, which shall be granted or not granted at the absolute discretion of the Lessors.
- (g) Lessee shall not generate, handle, use, store or treat any hazardous substance, or solid, infectious or medical waste on the Site except in compliance with all applicable environmental laws and regulations. Lessee shall be liable for cleanup of, or damages caused by, Lessee's generation, handling, use, storage or treatment of any hazardous substance, or solid, infectious or medical waste on the Site.
- (h) Lessee covenants at all times to indemnify and hold Lessors harmless from all loss, liability, cost or damage that may occur or be claimed with respect to any person or property on, in or about the Site, or to the Site itself, resulting from any act done or omission by or through Lessee, its agents, employees, invitees, or any person on the Site by reason of Lessee's use or occupancy, or resulting from Lessee's non-use or possession of the Site, and any and all loss, cost, liability or expense resulting therefrom; and further covenants at all times to maintain the Site in a safe and careful manner.
- (i) Lessee is responsible for, and covenants to obtain, all permits and approvals which may be required for the use and occupancy of the Site and the operation of the 'supportive housing for the elderly' projects. Lessors shall cooperate, to the extent necessary, in obtaining all such permits and approvals.

SECTION 8. Covenants of Lessors

- (a) Lessors warrant that the Site is free of encumbrances or claims adversely affecting the leasehold interest created hereby, and that they will defend the Lessee in the quiet enjoyment and peaceful possession thereof, provided Lessee is not in default in the performance of its obligations hereunder.
- (b) Each of the Localities covenants and represents that it owns an undivided one-fifth interest in the Site; that it has the full power and right to execute this Lease and to perform the obligations hereunder; that other than as recorded among the land records of Prince William County, no private restrictions exist with respect to the Site or the use thereof; and that no one, exclusive of the

Lessors and Lessee and their respective successors in interest, has any interest in or claim against the Site.

- (c) Lessors covenant and represent that to their knowledge, no hazardous substance or solid waste exists on, under or about the Site which would give rise to any claim or suit under any Federal or State environmental law.

SECTION 9. Assignment and Sublease. This Lease may not be assigned or transferred, and the Site may not be sublet, either in whole or in part, by the Lessee without the prior written consent of the Lessors except that Lessee may assign all, or part, of its interest in this Lease individually to each of the entities that will be the developers ~~owners~~ of each 'supportive housing for the elderly' project that is built on the Site. Any such entity shall be eligible, as specified in HUD's regulations or other requirements applicable to the Section 202 program, to be the developer ~~owner~~ of a 'supportive housing for the elderly' project.

SECTION 10. Improvements and Alterations by Lessee. Consistent with the provisions of Sections 5(a) and 7(b), the Lessee may, at any time during the term of this Lease, construct improvements or make alterations upon all or any part of the Site provided, however, the Lessee shall pay all amounts, if any, incurred in the construction of ~~imposed upon~~ such improvements.

SECTION 11. Ownership of Improvements. Throughout the term of this Lease, the Lessee shall have the benefit and burden of all incidents of ownership pertaining to the Site, including the buildings, structures and improvements now on, or hereafter constructed on, the Site whether or not affixed thereto. Accordingly, Lessee shall, during the term of this Lease, have the exclusive right to possession and use of the Site, including the right to furnish, equip, operate and maintain the 'supportive housing for the elderly' projects built on the Site. Upon the termination of this Lease, the property and all improvements located on the Site and all personal property permanently affixed thereto shall become the sole property of the Lessors, free and clear of any encumbrances which did not exist at the time of initial execution of this Lease by the parties, and the Lessee agrees to execute and deliver such documents as the Lessors may reasonably request to evidence the transfer of such property to the Lessors.

SECTION 12. Lessee Liable.

- (a) Lessors shall not be liable to the Lessee or any other person for any loss or damage suffered during the term of this Lease on account of any defective condition or depreciation of the Site arising or occurring during the term of this Lease.
- (b) All obligations and liabilities, whether on account of constructing, operating, improving, furnishing, equipping or maintaining the 'supportive housing for the elderly' projects or any improvements and alterations thereon by the Lessee; claims for damages or personal injuries, arising out of such constructing, operating, improving, furnishing, equipping or maintaining of such projects or any improvements and alterations thereon by the Lessee are and shall be exclusively the obligations and liabilities of the Lessee.

SECTION 13. Insurance. Lessee will maintain in force the following insurance coverages, at its cost and expense:

- (a) Casualty Insurance. A policy or policies of insurance to keep the Site, and any improvements thereon, (referred to in this context as the “Insured Property”) constantly insured against loss or damage by fire, lightning and all other risks covered by the “all-risk” and extended coverage insurance endorsements then in use in the Commonwealth of Virginia in an amount equal to the Full Insurable Value thereof (subject to a deductible of not more than \$50,000). The Full Insurable Value of the Insured Property shall be determined from time to time at the request of the Lessors by an architect, appraiser, appraisal company or one of the insurers, to be selected and paid by the Lessee. The insurance required pursuant to this Section shall be maintained at the Lessee’s sole cost and expense, and shall be maintained with one or more generally recognized responsible insurance company or companies authorized to do business in the Commonwealth of Virginia as may be selected by the Lessee. Copies of the insurance policies required under this Section, or originals or certificates thereof, each bearing notations evidencing payment of the premiums or other evidence of such payment, shall, upon request, be delivered by the Lessee to the Lessors. All such policies of insurance pursuant to this Section, and all renewals thereof, shall name the Lessors and the Lessee as insureds, as their respective interests may appear and shall contain a provision that such insurance may not be canceled, amended, modified or otherwise changed by the issuer thereof without at least thirty (30) days’ advance written notice to the Lessors and the Lessee.
- (b) Public Liability Insurance. A policy or policies of general accident and public liability insurance (including but not limited to coverage for all losses whatsoever arising from the ownership, maintenance, operation or use of any automobile, truck or other motor vehicle), under which the Lessors and the Lessee shall be named as insureds, properly protecting and indemnifying the Lessors and the Lessee, in an amount of not less than \$5,000,000 combined single limit injury (including death) and property damage in any one occurrence (with a deductible of not more than \$50,000). The policies of said insurance shall contain a provision that such insurance may not be canceled, amended, modified or otherwise changed by the issuer thereof without at least thirty (30) days’ advance written notice to the Lessors and the Lessee. Such policies or copies or certificates thereof shall, upon request, be furnished to the Lessors.
- (c) Worker’s Compensation Insurance. Any worker’s compensation coverage that Lessee is required to maintain by the laws of the Commonwealth of Virginia.

- (d) Builder's Risk Insurance. In the event that Lessee undertakes to construct improvements or alterations to the Site, Lessee will obtain builder's risk coverage in form and amount acceptable to Lessors.
- (e) Blanket Insurance Policies. The Lessee may satisfy any of the insurance requirements set forth in this Section by using blanket policies of insurance, providing all of the requirements and specifications of this Section regarding insurance are complied with.

SECTION 14. Damage, Destruction or Condemnation.

- (a) If the Site, or any of the improvements thereon, are damaged or destroyed, in whole or in part, by fire or other casualty, or taken under the exercise of the power of eminent domain or sold under the threat of the exercise of the power of eminent domain, ~~to such an extent that, in the reasonable determination of the Lessee, the operation of the supportive housing for the elderly projects will be adversely affected, then~~ the Lessee shall promptly notify the Lessors in writing as to the nature and extent of such damage or loss.
- (b) Upon the occurrence of any damage, destruction, taking or sale under the threat of taking as described above, the Lessee shall promptly proceed to rebuild, repair, restore or replace the 'supportive housing for the elderly' projects unless (i) the Lessors fail or refuse to make the insurance, condemnation or sales proceeds resulting from such event available to the Lessee for such purpose, or (ii) either the Lessors or the Lessee elects to terminate this Lease by written notice given to the other party within sixty (60) days following the event of loss, taking or sale, such notice to be effective as of the date stated therein, not more than thirty (30) days following the date of notice.
- (c) If the Lessee determines to rebuild, repair, restore or replace the 'supportive housing for the elderly' projects and, conditioned upon the availability of insurance, condemnation or sales proceeds sufficient for such purpose, the Lessee shall proceed promptly with, and complete with reasonable dispatch, and in any event within one (1) year after such damage or loss (or such longer period of time as the Lessors may permit if the rebuilding, repair, restoration or replacement has been commenced and is being diligently pursued by the Lessee), such rebuilding, repairing, restoring or replacing of the property damaged or destroyed so as to place the 'supportive housing for the elderly' projects in substantially the same condition as existed prior to the event causing such damage or destruction, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Lessee and as will not impair operating unity or productive capacity of the 'supportive housing for the elderly' projects subject to the prior written approval of such changes, alterations and modifications by the Lessors. If the insurance, condemnation or sales proceeds have been paid

to the Lessors, then such proceeds may be paid to a trustee designated by the Lessors for the purposes of administering and distributing such proceeds to assure an orderly and complete rebuilding, repair, restoration or replacement of the 'supportive housing for the elderly' projects, or may be paid by the Lessors directly to the Lessee for such purpose. If, within one (1) year after the date of such damage or destruction (or such longer period as the Lessors may permit), (i) the rebuilding, repairing, restoring and replacing is completed in accordance with plans and specifications therefore approved by the Lessors; (ii) all costs thereof have been paid by the Lessee, in full, as evidenced by appropriate sworn construction cost statements and mechanics' lien waivers; and (iii) the Lessee delivers to the Lessors satisfactory evidence of completion of said rebuilding, repairing, restoring and replacing, then the Lessors, or the trustee appointed by the Lessors, shall transfer any remaining proceeds and any sums earned upon the investment thereof to the Lessee.

- (d) Notwithstanding any other provision, of this Lease, upon the occurrence of any damage, destruction, taking or sale under the threat of taking as described above, the insurance, condemnation or sales proceeds shall be utilized in accordance with any applicable HUD requirements.

SECTION 15. HUD Approval. If Lessee does not obtain approval from HUD for the funding of either of the 'supportive housing for the elderly' projects discussed herein within five years from the effective date of this Lease, this Lease shall be void. If Lessee only obtains approval for the funding of one such project, this Lease shall be modified to the extent deemed necessary by the parties.

SECTION 16. Amendments. This Lease may only be amended by a writing signed by all parties hereto.

SECTION 17. Successors and Assigns. This Lease shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective successors and assigns.

SECTION 18. Notices. All notices in writing required or permitted by this Lease may be delivered in person or sent by registered mail, return receipt requested as follows:

If to Lessors:

(i) Office of the County Attorney, 12000 Government Center Parkway, Fairfax, Virginia 22035; (ii) Office of the County Attorney, One County Complex Court, Prince William, Virginia 22192; (iii) Office of the County Attorney, 1 Harrison Street, S.E., 5th Floor, Leesburg, Virginia 22177; (iv) Office of the County Attorney, 40 Culpepper Street, Warrenton, Virginia 22186; and (v) Office of the City Attorney, 301 King Street, Alexandria, Virginia 22314

If to Lessee:

Birmingham Green Adult Care Residence

8605 Centreville Road
Manassas, Virginia 20110

SECTION 19. Waiver. The waiver of any breach of any provision of this Lease shall not constitute a waiver of any other provision or breach of this Lease.

SECTION 20. Severability. If any provision of this Lease shall be held or deemed to be, or shall in fact be, unlawful, inoperative or unenforceable under Virginia law, such provision shall be ineffective only to the extent of such prohibition, without invalidating the remaining provisions of this Lease.

SECTION 21. Entire Understanding. This Lease, including the exhibits hereto, constitutes the entire understanding of all agreements of the parties hereto with respect to the subject matters hereof. Neither the Lessors nor the Lessee has made or shall be bound by any agreement or representation to the other which is not expressly set forth herein or in the exhibits attached hereto.

SECTION 22. Governing Law. This Lease shall be governed by the law of the Commonwealth of Virginia.

SECTION 23. Counterparts. This Lease may be executed in any number of counterparts and by different parties thereto on separate counterparts, each of which when so executed and delivered, shall be deemed to be an original and all of which, taken together, shall constitute but one and the same Lease.

SECTION 24. Lessors' Liability. Notwithstanding anything to the contrary contained in this Lease, Lessee agrees that Lessee shall look solely to the estate of Lessors in the Site for the collection of any judgment or other judicial process requiring the payment of money by Lessors for any default or breach by Lessors under this Lease.

SECTION 25. Lease Addendum. If Lessee's application to HUD, as discussed in Section 5, is approved, the parties shall execute an addendum to this Lease. Such addendum shall be in the form prescribed, and include the provisions required, by HUD. A sample of the type of lease addendum currently required by HUD is attached as Exhibit B. The parties acknowledge that the provisions of said addendum are subject to change between the date this Lease is executed and the date the parties execute a lease addendum in accordance with this section.

IN WITNESS WHEREOF, the Localities, as the Lessors, and Birmingham Green Adult Care Residence, as Lessee, have caused this Lease to be executed in their respective name and their corporate seals to be hereunto affixed and attested by their respective duly authorized officer, all as of the date first above written.

BIRMINGHAM GREEN
ADULT CARE RESIDENCE,
a Virginia nonstock corporation

(SEAL)

By _____
Chief Operating Officer

Attest:

THE COUNTY OF FAIRFAX

Authorized Officer

By _____
Title:

Attest:

THE COUNTY OF FAUQUIER

By _____
Authorized Officer

By _____
Title:

Attest:

THE COUNTY OF LOUDOUN

By _____
Authorized Officer

By _____
Title:

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

Attest:

THE CITY OF ALEXANDRIA

By _____
Authorized Officer

By _____
Title: